IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL WRIT PETITION NO.1597 OF 2002

Rajeev Vasantrao Parulekar & Anr. .. Petitioners (Org.Accused)

Vs.

Rupali Rajeev Parulekar & Anr. .. Respondents

Ms. S.D. Khot for Petitioners.
Ms. Varsha Palav h/f Mr. Rupesh Nalavade for Respondent No.1.

CORAM: S.S. PARKAR,J.

September 01, 2004.

P.C.:

1. This petition is filed by the accused for quashing Criminal Case No.614 of 2000 pending in the Court of 9th Judicial Magistrate First Class, Kolhapur.

2. The respondent no.1, who was the wife of Petitioner No.1, had filed complaint in the Court of JMFC, Kolhapur for offence under Section 406 read with Section 34 of IPC against the petitioners in respect of jewellery items and other articles which were left by her in her matrimonial house. The divorce between petitioner no.1 and respondent no.1 has been effected by decree of divorce dated 20/10/1999 passed by the Civil Judge, Senior Division, Kolhapur. After filing of the said complaint case was referred to the police

for inquiry and investigation under Section 156(3) of Cr.P.C. and thereafter charge-sheet came to be filed and the process was issued against the petitioners. The petitioners had applied for discharge before the Trial Court but that application was rejected on 20/7/2001. The revision application filed before the Sessions Court, Kolhapur was also rejected on 21/6/2002. Hence the present petition was filed in this Court which was admitted and rule was issued by this court on 22/1/2003. The proceedings in the lower court were also stayed by interim order passed in terms of prayer clause (c) of the petition.

3. When the Criminal Revision Application No.196 of 1999, filed by the respondent no.1-wife, had reached for admission before me on 18th August, 2004, both the sides expressed their desire to settle the matter and put an end to the criminal case filed by respondent no.1 against the petitioners for offence under Section 498-A of IPC, which was the subject matter of that revision application, as well as the Criminal Case No.614/2000, which is the subject matter of the present writ petition. Accordingly, the parties have settled both the matters and the Criminal Revision Application No.196/1999 filed by the respondent no.1-wife in this court against petitioner no.1 has

been withdrawn today. The Respondent No.1-original complainant has filed affidavit dated 28/8/2004 through her Advocate Ms. Palav in which she has stated that the parties have settled the matters between them and she does not want to initiate any litigation against the petitioners and the complaint filed by her against the petitioners which is the subject matter of this writ petition which was originally Case No.4 of 1998 is withdrawn by her. In the said affidavit she has stated that she has appointed her father Shri R.V. Waingankar as her power of attorney holder for settling the cases and receiving a sum of Rs.50,000/- and the articles which are in the custody of the petitioners. The power of attorney dated 28/8/2004 executed by the respondent no.1-complainant and affidavit dated 28/8/2004 filed by her are taken on record and marked Exs. "X" and "Y" respectively. The power of attorney executed by the complainant has annexed the copy of the list of articles which were deposited by the petitioners with the police. Besides the said articles, some other articles including jewellery items which had remained in the possession of the petitioners have been handed over today to the power of attorney holder Shri R.V. Waingankar, the father of the complainant, who, according to the learned advocate for respondent

no.1-wife, is present in the court.

4. Ms. Palav states that a sum of Rs.55,000/- towards full and final settlement, as agreed between the parties, has been received in cash by the father of the complainant Shri R.V. Waingankar, who is also power of attorney holder. Parties agree that the articles belonging to the complainant which were deposited with the police can be handed over to the complainant or to her power of attorney holder Shri R.V. Waingankar on her behalf.

5. Ms. Palav appearing for respondent no.1-complainant states that in view of the settlement between the parties the complainant does not wish to prosecute the complaint being Criminal Case No.614/2000 pending in the Court of 9th Judicial Magistrate First Class, Kolhapur. In the affidavit dated 28/8/2004 tendered today in this proceeding, the complainant has stated that in view of the settlement she has withdrawn the said case and has also executed power of attorney in her father’s favour for the said purpose. Since the complainant does not wish to prosecute the complaint lodged by her which is pending in the Court of 9th Judicial Magistrate First at Kolhapur as the parties have settled the matter among

themselves no useful purpose will be served by keeping the matter pending in that court. As it is the proceedings in the lower court had already been stayed by the interim order passed in the present petition filed on behalf of the accused for quashing the complaint. In view of the above, it is desirable to quash the proceedings pending in the Court of 9th Judicial Magistrate First Class at Kolhapur filed on the complaint of the respondent no.1-wife against the petitioners.

6. In the result, this writ petition is allowed and the Criminal Case No.614 of 2000 pending in the court of 9th Judicial Magistrate First Class, Kolhapur is hereby quashed. The trial court is directed to hand over all the articles deposited by the accused in the Juna Rajwada Police Station, Kolhapur under panchanama dated 16/9/2000 to the Respondent No.1-complainant or to her power of attorney holder Shri R.V. Waingankar. Rule is made absolute accordingly.

(S.S. Parkar, J.)